

Final

Minutes  
Virginia Outdoors Foundation  
Meeting of the Board of Trustees  
Wednesday, December 3, 2003  
Department of Forestry, Charlottesville

Trustees present: Mr. Frank Kilgore, Chairman, Dr. M. Rupert Cutler, Ms. Katherine Imhoff, Mr. Charles Seilheimer (arrived at 10am), Mr. John W. Abel-Smith and Ms. Jill Holtzman. Trustee absent: Mr. Paul Ziluca.

VOF Staff Present: Tamara Vance, Executive Director, Ruth Babylon, Sherry Buttrick, Anna Chisholm, Faye Cooper, Kristin Ford, Leslie Grayson, Harriet Maloney, Jeff Matthews, Estie Thomas, Leslie Trew, and Bill Wasserman. Also in attendance were Mr. Fred Fisher, Sr. Assistant Attorney General, Ms. Carrie Hagin from the James River Association, Mr. Chris Miller, Ex. Dir., Ms. Babbette Thorpe, Ms. Catherine Scott, Mr. Brooke Spotswood, Ms. Georgia Herbert and Mr. John Moore from the Piedmont Environmental Council and Mr. Joe Lerch from the Chesapeake Bay Foundation. Numerous members of the public attended along with representatives from the Mary Moody Northen Endowment, Historic Eppington Plantation, and Chesterfield County.

Chairman Kilgore convened the meeting at 9:10 pm. He appointed Ms. Vance as Secretary of the meeting and she confirmed that there was a quorum present.

Mr. Kilgore asked for any changes to the Order of Business.

Consent Agenda Changes: Moved easement proposal #'s 5, 13, 19, 30, 31, and 40 to non-consent, withdrew # 26, added #'s 54, 55, 56, and 60.

Non-Consent Agenda Changes: Added #'s 5, 13, 19, 30, 31 and 40, withdrew #'s 50 and 51, moved #'s 54, 55, 56, and 60 to consent agenda.

Ms. Imhoff made a motion to approve the Order of Business as modified above. The motion was approved unanimously. Dr. Cutler made a motion to accept the consent agenda easements including #'s 1-4, 6-12, 14-18, 20-25, 27-29, 32-34, 36-39, 41, 54-56, and 60 as presented. The motion was approved unanimously.

Ms. Imhoff made a motion to approve the minutes from the September meeting. The motion was approved unanimously.

### **Easement Proposals- Non-Consent**

Ms. Ford presented the Sorrell/Burke easement (#5) of 50 acres in Rappahannock County. Ms. Ford indicated that the landowner wished to increase the permitted square footage from 3500 to 4000 sq. ft. that would be allowed if the existing main house were to be enlarged in the future. Dr. Cutler made a motion to accept the easement with the above change. The motion was approved unanimously.

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Ms. Vance presented the Wilson easement (#13) of 270 acres in Franklin County. Ms. Vance indicated that the landowner proposed to have three permitted parcels rather than two and recommended approval because he was only asking for one secondary dwelling and had included a “no- build zone” above the 1900 ft. contour line. Dr. Cutler made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Trew presented the Hudson easement (#19) of 131 acres in Powhatan County. Ms. Trew indicated that there was a typo on the data sheet which listed “No division” under the terms. The correct listing should have been “One division” permitted. Also, in the provisions for the Management of the Forest, the landowner wished to include language that would identify the two primary goals of the forest stewardship plan as “management of timber for income” and “forest stand management to maintain the health of the forest”. Dr. Cutler made a motion to accept the easement modified above. The motion was approved unanimously.

Ms. Grayson presented the Schied easement (#30) of 113.14 acres in Fauquier County. Dr. Cutler made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Grayson presented the Lawrence Estate easement (#31) of 70 acres in Fauquier County. Ms. Grayson indicated that the easement contains a revised Subdivision Clause regarding boundary line adjustments and presented the language to the Trustees. In addition to the standard language regarding boundary adjustments it also permits a small adjustment to permit conveyance of an existing roadbed that provides access to an adjacent parcel. She recommended acceptance of the easement including the language because it would not involve a loss of acreage and would provide a solution to an identified and reasonable transaction between neighbors. Ms. Imhoff made a motion to accept the easement with the revised language pertaining to subdivision and boundary line adjustments. The motion was approved unanimously.

Ms. Ford presented the Fitter easement (#35) of 31.09 acres in Fauquier County. Ms. Ford indicated that the landowners wished to increase the allowable sq. ft. for the existing secondary dwelling from less than 2100 to less than 2500 and to increase the threshold for farm building review from 2500 sq. ft. to 4500 sq. ft. Ms. Ford recommended acceptance of these changes because they were within the limits of the Guidelines. Ms. Holtzman made a motion to accept the easement as modified above. The motion was approved unanimously.

Ms. Buttrick presented the Deutsch/Green easement (#40) of 15.64 acres in Madison County. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Ford presented the Sloane easement (#42) of 26.054 acres in Rappahannock County. Dr. Cutler made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Ford presented the Elliff easement (#43) of 25.19 acres in Madison County. Ms. Holtzman made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Cooper presented the Benham easement (#44) of 18.5 acres in Clarke County. Ms. Cooper presented new language developed by the landowner to be inserted into paragraph #5, Buildings and Structures, allowing for a second dwelling to be built if a Development Unit Right (DUR) is transferred from an adjoining property, so long as the source property is also under easement with the VOF. She also indicated that they wished to change the phrase in 5(i) from “one single dwelling” to: “the existing family dwelling which may be renovated, repaired, replaced, or reasonably enlarged.” Dr. Cutler made a motion to accept the easement as modified above. Ms. Imhoff voted against the motion saying she was not comfortable with the revised transfer language and the possibility of two dwellings on 18.5 acres. The motion carried with five votes.

Ms. Buttrick presented the Two Times Five, LLC easement (#45) of 1261 acres in Albemarle County. Ms. Buttrick indicated that the house on the property, called “Maple Hill”, was eligible for Historic status, but had not applied for the designation. Ms. Imhoff wanted to clarify that the intent of the landowner in regards to the permitted “farm store” was that the store would be limited to 4500 sq. ft. although it could be located in any of the larger permitted farm buildings. Ms. Buttrick indicated that that was the intent as she understood it and that she thought the language as written conveyed that limit. Ms. Vance suggested that the phrase, “is intended to be”, be inserted into the second paragraph on page two so that the sentence would read, “...this Easement *is intended to* constitute a “qualified conservation contribution”....” Mr. Kilgore requested that henceforth easement language shall require written approval for any required approval in easements. Dr. Cutler made a motion to accept the easement as modified above. The motion was approved unanimously.

Ms. Buttrick presented the Warren easement (#46) of 145.33 acres in Albemarle County. Ms. Buttrick recommended that the Trustees incorporate language that restricts any possible future rebuilding of the existing buildings to the approximate current locations in order to protect farm fields and historic resources. Mr. Seilheimer made a motion to accept the easement with the above modification. The motion was approved unanimously.

Ms. Grayson presented the Lawrence Estate (Highbury) easement (#47) of 42.33 acres in Albemarle County. Ms. Grayson indicated that the landowners were requesting to have two secondary dwellings on the parcel, which exceeds the general rule of thumb regarding numbers of secondary dwellings in the Guidelines. She recommended acceptance of the easement because one of the secondaries exists, is small and would not be allowed to be enlarged or moved. Mr. Seilheimer made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Grayson presented the Montpelier easement (#48) of 399.25 acres in Rappahannock County. Dr. Cutler left the room at this point; Ms. Vance confirmed the quorum. Mr. Seilheimer made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Grayson presented the Thompson easement (#49) of 827.88 acres in Fauquier County. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

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Ms. Buttrick presented the Mathews (Blenheim Farm) easement (#53) of 79.532 acres in Albemarle County. Dr. Cutler returned to the room during this discussion and was present for the following vote. Ms. Seilheimer made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Buttrick presented the Nixon easement (#57) of 112.93 acres in Orange County. Ms. Buttrick indicated that the landowner objected to the standard template trash language and Ms. Vance suggested that language be constructed to include that “no accumulation of trash could be visible to the driving public and that all trash be limited to that which had been generated on the property”. Ms. Holtzman made a motion to accept the easement as modified above. The motion was approved unanimously.

Ms. Buttrick presented the Baird easement (#58) of 150.934 acres in Albemarle County. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Buttrick presented the Brantley easement (#59) of 39.529 acres in Orange County. Mr. Seilheimer made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Grayson presented the Richardson easement (#61) of 203 acres in Fauquier County. Mr. Seilheimer made a motion to accept the easement as presented, but encouraged Ms. Grayson to talk with the lawyer and try to have the language “...which shall not be unreasonably withheld” removed from the document. The motion was approved unanimously.

Ms. Grayson presented the Greer easement (#62) of Rappahannock County. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

The Chairman recessed the meeting at 11:20 am for a ten minute break.

### **Preservation Trust Fund Proposals**

Ms. Imhoff made a motion to accept easements #'s 63, 64, 65, and 66 as presented as they would have qualified for the consent agenda if not for the PTF grant requests. The motion was approved unanimously.

Ms. Cooper presented the following grant requests:

Borzelleca/Hobson	(#63) of 49.6 acres in Nelson County- request \$ 3,000
Bush	(#64) of 154 acres in Botetourt County- request \$4,500
Rose	(#65) of 230 acres in Rockbridge County- request \$3,925

Ms. Babylon presented the St. John easement (#66) of 43.5 acres in Floyd County- request \$4,000.

Ms. Imhoff made a motion to fund the grant requests as recommended by staff;

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Borzelleca/Hobson	\$1,500
Bush	\$4,500
Rose	\$3,500
St. John	\$3,500

The motion was approved unanimously.

### **Easement Proposals for County PDR Programs**

Ms. Thomas presented the Crawford easement (#67) of 31.65 acres in Albemarle County. Ms. Imhoff made a motion to accept the easement provided that the standard template language relating to agriculture and forestry were used, that no road right of way be provided, and that the commercial use paragraph be clarified to not allow factories. The motion was approved unanimously.

Ms. Grayson presented the Dennis easement (#68) of 125.09 acres in Loudoun County. Ms. Grayson indicated that this property was the last piece of a planned Potomac River Heritage Trail and was unusual in that it is located in an urban area on the edge of Leesburg and connects two blocks of protected green space along the Potomac River. She made note that the VOF guidelines speak specifically to the fact that the parcelization and building permitted on proposed VOF easements in urban areas must be looked at in the context of their surroundings rather than only with the numerical standards usually applied to VOF easements in rural areas. Dr. Cutler made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Imhoff made a motion to create a “Board Policy” that in all future joint PDR projects the participating County should accept primary responsibility in the easement for monitoring and enforcing all Best Management Practices (BMP’s) for agriculture. The motion was approved unanimously.

### **Reconsideration- Easement Proposals Approved at Previous Meetings**

Ms. Thomas presented the CWPT easement (#69) of 397.88 acres in Orange County. Ms. Imhoff recused herself from the discussion and vote on this proposal due to family connections with the project. Mr. Seilheimer made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Trew presented the Charlton easement (#70) of 1,485.54 acres in Charlotte County. Ms. Trew indicated that the proposal was back before the Trustees because a survey had determined that there was less acreage than originally considered. Dr. Cutler made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Vance presented the Graham easement (#52) of 525 acres in Montgomery County. Ms. Vance indicated that the landowners wished to allow six parcels only if upon completion a survey found that the property did contain 600 acres and that they had added language permitting a rural retreat center. Ms. Imhoff made a motion to accept the easement as presented. The motion was approved unanimously.

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Ms. Grayson presented the Miller easement (#71) of 600 acres in Rappahannock County. Ms. Grayson indicated that the proposal was back before the Trustees because a survey had determined that the property included more acreage than previously thought and that the landowner wished to allow six parcels. Ms. Grayson recommended acceptance of the easement because it met the current Guidelines. Mr. Seilheimer made a motion to accept the easement as presented. The motion was approved unanimously.

Ms. Thomas requested that the Trustees approve adding the standard cell tower language to easement #22 which was accepted in the “Consent Agenda Easements” earlier in the meeting. Ms. Imhoff made a motion to accept the easement with the addition of the standard cell tower language. The motion was approved unanimously.

Dr. Cutler made a motion to convene the Board into a closed meeting pursuant to subsection A, paragraphs 1, 3, and 7 of Section 2.2-3711 of the Code of Virginia, to discuss and/or to consult with counsel regarding the disposition of property interest and pending litigation. Ms. Holtzman seconded the motion and Ms. Vance recorded that each Trustee voted aye.

Ms. Holtzman made a motion to end the closed meeting and Dr. Cutler seconded the motion. The motion was approved unanimously.

Ms. Holtzman made a motion to certify the closed meeting,

“WHEREAS, the Board of Trustees of the Virginia Outdoors Foundation (“the Board”) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Board in an open meeting that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby certifies, to the best of each member’s knowledge, the following:

- (1) Only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and
- (2) Only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

Dr. Cutler seconded the motion and Ms. Vance recorded that each Trustee voted aye to the motion.

Mr. Kilgore suggested that VOF consider requiring twenty year title searches for liens and judgments on proposed easement properties where tax credits are desired. He indicated that there would be further discussion on the idea at the upcoming Trustee work session.



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Ms. Grayson updated the Trustees on the progress with the co-holding policy and asked for approval to circulate the proposed policy memorandum to other land trusts and interested parties in order to gather some comments and feedback before the next Trustee meeting. Ms. Imhoff made a motion to approve the circulation of the document with a further presentation and discussion of the subject at the next Trustee meeting in March. The motion was approved unanimously.

Mr. Kilgore invited Ms. Betty Massey to address the Trustees concerning the Mary Moody Northern Endowment property on Courthouse Road in Chesterfield County.

Ms. Massey addressed the Trustees about the history and mission of the Mary Moody Northern Endowment and briefly outlined a possible diversion concept that involved possible substitute land adjacent to the Eppington Plantation in Chesterfield County. Mr. Seilheimer asked Ms. Massey about the MMN Endowment grants or charitable giving in the state of Virginia in the last five years. He also questioned, as a practical matter, what the MMN Endowment stood to gain as he understood that the VOF's deeded interest in the property in terms of value would be the difference between its value without restrictions (i.e. intensive zoning) and its value as green space. This is most of the value in the property which would have to be replaced with a protection of equal value on other property. She indicated that the Endowment financially supports projects and research at its Mountain Lake property in Giles County, Virginia, but that currently was the extent of its giving in Virginia. A representative from Eppington Plantation addressed the Trustees about the history, mission, and growing threat of development to the land surrounding the plantation. Dr. Cutler made a motion to request that the MMN Endowment create a passive-use recreational park on the Chesterfield property on Courthouse Road. The motion carried with three votes. Mr. Abel-Smith and Ms. Holtzman both abstained from the vote.

Numerous members of the public addressed the Trustees following the presentation to voice concerns over the possible diversion from open-space of the easement over the Courthouse Road property owned by the MMN Endowment.

Mr. Kilgore stated that the Trustees were legally bound to presume the intent of the Grantor of the easement over the MMN Endowment property as embodied in the document and that further testimony or argument as to the intent of the Grantor served no purpose. He further indicated that there would be additional time available for public comment at the meeting in which the proposal from the MMN Endowment was formally presented whenever that occurred. Many members of the public wrote letters to the Trustees related to this issue, including Delegate Lee Ware, Jr., and all are available on request from VOF.

### **Establish Meeting Dates for 2004**

The Trustees tentatively scheduled the following meeting dates and locations;

Tuesday, February 3--- Work Session Meeting--- Richmond- cancelled

Tuesday, March 16--- Trustee Meeting--- Charlottesville (subsequently rescheduled for March 18-19)

Wednesday, June 16--- Trustee Meeting--- Roanoke

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Thursday, September 23---Trustee Meeting---Charlottesville

Wednesday, December 8---Trustee Meeting---Charlottesville

Ms. Buttrick presented a request from the American Bar Association for support of a proposed bill to amend and reenact § 10.1-1703 of the Code of Virginia relating to open-space easements in order to more closely follow federal regulations. Mr. Seilheimer made a motion to approve endorsement of the proposed bill if it should be introduced at the next session of the General Assembly. The motion was approved unanimously.

Mr. Fred Fisher mentioned that the recently added “extinguishment” clause language seemed to be having the unintended affect of intimidating many prospective easement donors and to little end because it was of no great importance to the easement document. He advised the Trustees that in his opinion, it could and should be left out if the donors wished.

Mr. Seilheimer made a motion to convene the Board into a closed meeting pursuant to subsection A, paragraph 1 of §2.2-3722 of the Code of Virginia, to discuss and/or to consult with counsel regarding personnel issues. Dr. Cutler seconded the motion and the motion was approved unanimously.

Mr. Kilgore recessed the closed meeting at 4:45pm and announced that the Trustees would attend the planned reception directly following the meeting, reconvene the closed session at Farmington Country Club for a working dinner and then adjourn the closed session and reconvene the open session at The Best Western- Cavalier Inn at or around 9:00 pm.

Mr. Kilgore then recessed the open meeting at 4:50 pm.

The Trustees met at The Best Western- Cavalier Inn at 9:10 pm. Ms. Imhoff made a motion to adjourn the closed meeting and appoint Ms. Buttrick as Secretary of the Meeting in the absence of Ms. Vance. The motion was approved unanimously. Ms. Imhoff made a motion to certify the closed meeting,

“WHEREAS, the Board Trustees of the Virginia Outdoors Foundation (“the Board”) has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

“WHEREAS, §2.2-3712 of the code of Virginia requires a certification by the Board in an open meeting that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby certifies, to the best of each member’s knowledge, the following:

- (1) Only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification applies, and



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- (2) Only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

Mr. Seilheimer seconded the motion and Ms. Buttrick recorded the unanimous vote.

Mr. Kilgore adjourned the meeting at 9:20 pm.

Respectfully submitted,

Anna G. Chisholm